

Montana Deferred Deposit Loan Act

31-1-701. Short title. This part may be cited as the "Montana Deferred Deposit Loan Act".

History: En. Sec. 1, Ch. 404, L. 1999.

31-1-702. Purpose -- rules. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

History: En. Sec. 2, Ch. 404, L. 1999.

31-1-703. Definitions. For the purposes of this part, the following definitions apply:

(1) "Account" means any banking, checking, credit union, commercial, savings, savings and loan, brokerage, investment, or other kind of depository account held by a consumer.

(2) "Check" means a negotiable instrument, as defined in [30-3-104](#), that is drawn on a bank and is payable on demand at the maturity of a deferred deposit loan.

(3) "Consumer" means a natural person who, singly or jointly with another natural person, enters into a deferred deposit loan.

(4) "Deferred deposit lender" or "licensee" means a person engaged in the business of making deferred deposit loans.

(5) "Deferred deposit loan" means an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:

(a) a person accepts a check dated on the date on which the check is written and agrees to hold the check for a period of days prior to deposit or presentment;

(b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check; or

(c) a person accepts written authorization from a consumer to electronically deduct from the consumer's account on a specific date the amount of the loan and fees that are authorized under this part.

(6) "Department" means the department of administration.

(7) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other entity.

History: En. Sec. 3, Ch. 404, L. 1999; amd. Sec. 1, Ch. 81, L. 2001; amd. Sec. 71, Ch. 483, L. 2001.

31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

(a) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than \$2 a check for the service; or

(b) a collection agency doing business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender.

History: En. Sec. 4, Ch. 404, L. 1999; amd. Sec. 2, Ch. 81, L. 2001; amd. Sec. 70, Ch. 114, L. 2003; amd. Sec. 1, Ch. 221, L. 2003; amd. Sec. 8, Ch. 163, L. 2005.

31-1-705. License -- business locations -- rules. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department.

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of \$375.

(3) (a) The department may not issue or renew a license unless findings are made that:

(i) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(ii) the applicant has unencumbered assets of at least \$25,000 for each location;

(iii) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and

(iv) other information that the department considers necessary has been provided.

(b) The department may not issue or renew a license if the criminal history of the employees of the applicant demonstrates any convictions involving fraud or financial dishonesty or if the department's findings show adverse civil judgments involving fraudulent or dishonest financial dealings.

(4) A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is \$187.50.

(5) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license.

History: En. Sec. 5, Ch. 404, L. 1999; amd. Sec. 3, Ch. 81, L. 2001; amd. Sec. 1, Ch. 119, L. 2005.

31-1-706. License renewal fee. (1) A person licensed under [31-1-705](#) shall pay, on or before December 1 of each year, a license renewal fee of \$125 for each license that the person holds under this part.

(2) Failure to pay any yearly license renewal fee required by this section within the time prescribed will result in the automatic revocation of the license subject to renewal.

History: En. Sec. 4, Ch. 81, L. 2001.

31-1-707 through 31-1-710 reserved.

31-1-711. Annual examinations -- fee. (1) The department shall conduct annually an examination of each licensee's deferred deposit lending operation to ensure that the licensee is in compliance with the provisions of this part.

(2) A licensee shall pay the department a fee in the amount of \$300 a day for each examiner required to conduct an annual examination.

(3) A licensee shall make available to a department examiner the information required under [31-1-714](#) or as required by rule.

(4) Completion of an annual examination must, in the absence of the department's finding just cause to revoke or suspend a license, constitute grounds for license renewal.

History: En. Sec. 6, Ch. 404, L. 1999.

31-1-712. License revocation -- penalty. (1) If the department finds, after due notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, the department may impose a civil penalty not to exceed \$1,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

History: En. Sec. 7, Ch. 404, L. 1999; amd. Sec. 2, Ch. 221, L. 2003.

31-1-713. Complaint procedure. The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this part. The department may hold hearings upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or suspend or revoke a license granted under this part.

History: En. Sec. 8, Ch. 404, L. 1999.

31-1-714. Information and annual reports. (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time.

The records must be kept for 2 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each consumer loan with documentation maintained in the consumer's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year;

(d) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

(e) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

(f) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar amount of checks charged off during the year ending as of December 31 of the previous year;

(g) the total number and dollar amount of agreements involving electronic transactions or deductions, the total number and dollar amount of electronic deductions made by the licensee, and the total number and dollar amount of electronic deductions for insufficient funds charged off during the year ending as of December 31 of the previous year; and

(h) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure documents described in [31-1-721](#) with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department.

History: En. Sec. 9, Ch. 404, L. 1999; amd. Sec. 5, Ch. 81, L. 2001; amd. Sec. 2, Ch. 119, L. 2005.

31-1-715. Loan requirements -- right of rescission -- arbitration. (1) Each deferred

deposit loan may not have a term that exceeds 31 days.

(2) The amount of the deferred deposit loan, exclusive of the fee allowed in [31-1-722](#)(2), may not exceed \$300.

(3) The minimum amount of a deferred deposit loan is \$50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) (a) The loan agreement must contain a provision that the consumer may rescind the transaction if, by 5 p.m. of the licensee's first business day following the day that the loan was executed, the consumer provides the licensee with cash or certified funds equaling 100% of the amount loaned to the consumer.

(b) A licensee may not charge a consumer any fee or interest if the consumer rescinds the loan as provided in subsection (5)(a).

(c) Except as provided in subsection (5)(a), a consumer does not have a right to rescind the loan unless the licensee agrees to the rescission.

(6) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a consumer's rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (6)(a).

(7) Only the licensee may make an electronic deduction from the consumer's account. The licensee shall ensure that information obtained from the consumer about the consumer's account remains confidential.

(8) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in [31-1-721](#) upon consummation of the loan.

(9) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.

History: En. Sec. 10, Ch. 404, L. 1999; amd. Sec. 6, Ch. 81, L. 2001; amd. Sec. 1, Ch. 210, L. 2005.

31-1-716 through 31-1-720 reserved.

31-1-721. Required disclosures -- loan agreement. (1) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred deposit loan transaction;

(b) includes a telephone number to the department's office that handles concerns or complaints by consumers; and

(c) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information.

(2) Licensees shall provide consumers with a written agreement on a form specified or approved by the department that can be kept by the consumer, which must include the following information:

(a) the name, address, and phone number of the licensee making the deferred deposit

loan and the initials or other written means of identifying the individual employee who signs the agreement on behalf of the licensee;

(b) the name, address, and phone number of the consumer obtaining the deferred deposit loan;

(c) an itemization of the fees and interest charges to be paid by the consumer;

(d) a clear description of the consumer's payment obligations under the loan; and

(e) in a manner that is more conspicuous than the other information provided in the loan document and that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal court for collection of this loan". The statement must be located immediately preceding the signature of the consumer.

History: En. Sec. 11, Ch. 404, L. 1999; amd. Sec. 3, Ch. 221, L. 2003.

31-1-722. Prohibited and permitted fees -- attorney fees and costs. (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan.

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee may not collect damages under [27-1-717](#)(3) for an insufficient funds check.

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee may not collect damages under [27-1-717](#)(3) for an electronic deduction for which there are insufficient funds.

(5) If the loan agreement in [31-1-721](#) requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part.

History: En. Sec. 12, Ch. 404, L. 1999; amd. Sec. 7, Ch. 81, L. 2001; amd. Sec. 4, Ch. 221, L. 2003.

31-1-723. Prohibited acts. A licensee making deferred deposit loans may not commit, or have committed on behalf of the licensee, any of the following prohibited acts:

(1) engaging in the business of deferred deposit lending unless the department has first issued a valid license;

(2) threatening to use or using a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

- (3) altering the date or any other information on a check received from a consumer;
- (4) altering or changing the date upon which the licensee and consumer agreed to make any electronic deductions from the consumer's account unless the consumer agrees in writing to the change;
- (5) making any false, misleading, or deceptive representation to a financial institution relating to a consumer who has agreed to provide payment for a loan through an electronic deduction;
- (6) using any device or agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part, including but not limited to entering into a different type of transaction or renewing or rolling over a loan with the consumer;
- (7) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan;
- (8) entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer's monthly net income.
- (9) charging to cash a check representing the proceeds of the deferred deposit loan;
- (10) charging to perform an electronic deduction or transaction to obtain the proceeds of the deferred deposit loan;
- (11) using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law;
- (12) using or attempting to use the consumer's authorization to deduct the amount set forth in the loan agreement or any other information obtained from the consumer or the consumer's financial institution for any purpose other than to collect the proceeds of the deferred deposit loan;
- (13) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate;
- (14) making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the fee allowed in [31-1-722\(2\)](#), exceeds a total of \$300 when combining the face amount of the checks written in connection with each loan. Regardless of the total of the loans, a licensee may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee.
- (15) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made to the same consumer. However, a licensee may without charge extend the term of the loan beyond the due date.
- (16) accepting any collateral for a deferred deposit loan;
- (17) charging any interest, fees, or charges other than those specifically authorized by this part, including but not limited to charges for insurance;
- (18) threatening to take any action against a consumer that is prohibited by this part or making any misleading or deceptive statements regarding the deferred deposit loan;
- (19) making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;
- (20) including any of the following provisions in the loan agreement required by [31-1-721](#):

- (a) a hold harmless clause;
- (b) a confession of judgment clause;
- (c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;
- (d) any assignment of or order for payment of wages or other compensation for services;
- (e) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or
- (f) a waiver of any provision of this part.

History: En. Sec. 13, Ch. 404, L. 1999; amd. Sec. 8, Ch. 81, L. 2001; amd. Sec. 2, Ch. 210, L. 2005.

31-1-724. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any intentional violation of this part constitutes an unfair or deceptive trade practice.

(3) Any person found to have intentionally violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part.

History: En. Sec. 14, Ch. 404, L. 1999; amd. Sec. 5, Ch. 221, L. 2003.

31-1-725. Criminal penalties. Any person, including a member, officer, or director of a deferred deposit lender who knowingly violates this part is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 6 months, or both.

History: En. Sec. 15, Ch. 404, L. 1999.